

**STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
45 Fremont Street, 21st Floor
San Francisco, California 94105**

**NOTICE OF PROPOSED ACTION AND
NOTICE OF PUBLIC HEARING**

RH05044654

July 12, 2005

SUBJECT OF HEARING:

A hearing will be held regarding the adoption of proposed amendments to regulations interpreting and making specific provisions of Insurance Code Section 758(c).

AUTHORITY AND REFERENCE:

The Insurance Commissioner proposes to adopt specified portions of the subject regulations under the authority of Insurance Code Sections 758, 12921, and 12926. The Commissioner's decision on the adoption of the amendments will further interpret and make specific provisions of Insurance Code Section 758(c).

HEARING DATE AND LOCATION:

Notice is hereby given that public hearings will be held to permit all interested persons the opportunity to present statements or arguments, orally or in writing, with respect to these regulations as follows:

Date and time:	September 27, 2005 9:30 am*
Location:	Department of Insurance Hearing Room 45 Fremont Street, 22nd Floor San Francisco, CA 94105
	September 28, 2005 9:30 am*
Location:	Ronald Reagan State Office Building 300 South Spring Street Ground Floor Hearing Room Los Angeles, California 90013

*These hearings will continue on the dates noted until all testimony has been completed or 4:00 p.m., whichever is earlier.

PRESENTATION OF WRITTEN AND/OR ORAL COMMENTS; CONTACT PERSONS:

All persons are invited to present oral and/or written comments at the scheduled public hearings. Written comments not presented at the scheduled public hearings should be addressed to the following contact person:

Teresa R. Campbell, Staff Counsel
California Department of Insurance
45 Fremont Street, 21st Floor
San Francisco, CA 94105
Telephone: (415) 538-4126

Questions regarding the hearing, comments, or the substance of the proposed action should be addressed to the above contact person. If she is unavailable, inquiries may be addressed to the following backup contact person:

Tony Cignera, Division Chief, Consumer Services Division
California Department of Insurance
300 South Spring Street, 14th floor
Los Angeles, CA 90013
Telephone: (213) 346-6360

DEADLINE FOR WRITTEN COMMENTS:

All written materials, unless submitted at the hearings, must be received by the Insurance Commissioner, c/o the contact person at the address listed above, no later than **4:30 p.m. on September 26, 2005**. Any written materials received after that time will not be considered.

COMMENTS TRANSMITTED BY E-MAIL OR FACSIMILE:

The Commissioner will accept written comments transmitted by e-mail provided they are sent to the following e-mail address: campbellt@insurance.ca.gov. The Commissioner will also accept written comments transmitted by facsimile provided they are sent to the contact person listed above at the following facsimile number: (415) 904-5490. **Comments sent to other e-mail addresses or other facsimile numbers will not be accepted. Comments sent by e-mail or facsimile are subject to the deadline for written comments set forth above.**

ACCESS TO HEARING ROOMS:

The facilities to be used for the public hearing are accessible to persons with mobility impairments. Persons with sight or hearing impairments are requested to notify the contact person (listed below) for these hearings in order to make special arrangements, if necessary.

ADVOCACY OR WITNESS FEES:

Persons or groups representing the interests of consumers may be entitled to reasonable advocacy fees, witness fees, and other reasonable expenses, in accordance with the provisions of Subchapter 4.5, Title 10, of the California Code of Regulations, in connection with their participation in this matter. Interested persons should contact the Office of the Public Advisor at the following address, in order to inquire about the appropriate procedures:

California Department of Insurance
Office of the Public Advisor
300 Capitol Mall, 17th Floor
Sacramento, CA 95814
(916) 492-3559

A copy of any written materials submitted to the Public Advisor regarding this rulemaking must also be submitted to the contact person for this hearing, listed above. Please contact the Office of the Public Advisor for further information.

INFORMATIVE DIGEST:

SUMMARY OF EXISTING REGULATIONS AND POLICY STATEMENT OVERVIEW:

Ins. Code section 758(c) requires any insurer that conducts an auto body repair labor rate survey to determine and set a specified prevailing rate in a specific geographic area to report the results of the survey to the Department of Insurance. The Department of Insurance is required to make the information available upon request. The statute, however, was unclear as to what constituted an auto body repair labor rate survey, what constituted a prevailing rate, what information had to be reported to the department, where the results of the survey should be reported, and how to obtain a copy of surveys submitted pursuant to the statute.

Title 10 of the Cal. Code of Regulation sections 2698.1, operative October 25, 2002, provided some guidance in these areas by defining “labor rate survey” and “prevailing auto body rate” as used in the statute. Section 2698.1 further provides a clarification of what information should be included in the results reported to the Department.

Although the current regulations provide some broad definitions, outline what information should be included in the surveys, and provide a procedure for submitting the surveys to the Department of Insurance, based on the information, reports, and complaints we have received from consumers, insurers, and the auto body industry, there are several areas that require further clarification. For example, because there is no standard methodology specifically outlined in the statute (i.e. should insurers use the average rate of the shops surveyed or the median of rates obtained by survey), the surveys tend to produce inconsistent results, creating confusion when

the insurers rely on the results to support their adjustment of the body shop estimate as reasonable within the meaning of CCR 2695.8(f) of the Fair Claims Settlement Practices regulations. As a result of the labor rates disputes that arise, the consumer is often placed in a position where they have to pay the difference between the shops labor rate and the rate the insurer will pay before the body shop releases the car. The proposed amendments will further define specific terms and more clearly set out the purpose and use of the surveys.

The Commissioner has determined that the adoption of an amendment to the existing regulations is necessary in order to effectively administer Insurance Code Section 758(c). The regulations would do the following:

- 1) Further define “labor rate survey” and “prevailing auto body rate.”
- 2) Outline what additional information must be included in labor rate survey results reported to the Department of Insurance and where those results should be sent.
- 3) Clarify the purpose and use of the statute.
- 4) Clarify how to request labor rate survey results submitted to the Department of Insurance.

The specific purpose of each adoption and amendment, and the rationale for the determination that each adoption and/or amendment is reasonably necessary to carry out the purpose for which it is proposed, together with a description of the public problem, administrative requirement, or other condition or circumstance that each adoption is intended to address, is set forth below.

EFFECT OF PROPOSED ACTION:

The major effects of the regulations are as follows:

Proposed section 2698.91(a)

Existing 2698.91(a) defines the term “auto body repair labor rate survey” as used in Ins. Code section 758(c). The proposed amendment would make the definition apply to the term “survey” as well. Additionally, the proposed amendment would require that the insurer conduct the survey in writing or maintain written records of information gathered by methods other than in writing. Moreover the amendment requires that the submitting insurer make the records of the data used to complete the survey available to the Department of Insurance upon request. The underlying information supporting the survey would become necessary if the accuracy of the survey were questioned. Additional language and punctuation changes have been made for clarification and consistency purposes. The change to this section is necessary to further define and clarify these terms in order to assist the reader in understanding the statute and regulations.

Proposed section 2698.91(b)

Existing 2698.91(b) defines “prevailing auto body rate” as employed in Ins. Code section 758(c). Confusion has arisen regarding the current definition. The proposed amendment clarifies the definition by more specifically describing the term. Additional language and punctuation changes have been made for clarification and consistency purposes. The change to this section is necessary to further define and clarify these terms in order to assist the reader in understanding the statute and regulations.

Proposed section 2698.91(c)

Existing 2698.91(c) requires the insurer to provide a description of what geographic areas were surveyed, a description of the methodology used to reach the prevailing rate, and the prevailing rate established for each geographic area surveyed. This information provides a context for the information specifically outlined in the statute. The proposed amendment further requires that the submitting insurer provide the labor rate charged by each particular shop surveyed the total number of shops that responded to their survey, and the date the survey was completed.

Additionally, subsection (5) currently requires a description of the geographic area covered by the labor rate reported in the survey. The proposed amendment further defines what constitutes a geographic area, requires the insurer report the number of shops surveyed in the geographic area, and provide a list of zip codes or groups of zip codes that make up the area.

This section also currently requires that any confidential information not required by the statute or regulations be removed from the survey before it is submitted to Department of Insurance. This language has been moved to new section 2698.91(h). Additional language and punctuation changes have been made for clarification and consistency purposes. The change to this section is necessary to further clarify the statutory provisions and for organizational purposes and consistency.

Proposed section 2698.91(d)

Existing 2698.91(d) requires that the surveys be submitted to the Market Conduct Division of the Department of Insurance. The proposed amendment removes this language completely (see proposed section 2698.91(h)) and inserts language prohibiting an insurer from using rates it has negotiated with shops in its Direct Repair Program or any other auto body repair shop. The use of these negotiated rates may result in an artificially low prevailing rate for a specific geographic area. The amended section further states that the regulations do not preclude an insurer from using the non-contracted rate of its Direct Repair Program members. The change to this section is necessary to clarify the statutory provision and for organizational purposes.

Proposed section 2698.91(e)

Existing 2698.91(e) sets out the procedure for requesting copies of the surveys. The proposed amendments removes this language completely and inserts language specifically stating that nothing in these regulations requires an insurer to pay more than necessary to perform workmanlike repairs to a vehicle, as required by 2695.8(f) of the Fair Claims Practices Act (California Code of Regulations, Title 10, Chapter 5, Subchapter 7.5). The change to this section is necessary to clarify the statutory provision and for organizational purposes.

Proposed section 2698.91(f)

This is a new section. The proposed amendment clarifies that nothing in these regulations prohibits an insurer from voluntarily negotiating or contracting with an auto body repair shop for a specific labor rate. The change to this section is necessary to clarify the statutory provisions.

Proposed section 2698.91(g)

This is a new section. The proposed amendment clarifies the purpose and use of the labor rate survey, stating that it may be used to support the reasonableness of an insurer's adjustment to a auto body shop repair estimate pursuant to section 2695.8(f)(3) of the Fair Claims Practices Act (California Code of Regulations, Title 10, Chapter 5, Subchapter 7.5). The proposed amendment also limits the use of labor rate surveys for this purpose to those surveys less than 18 months old. The change to this section is necessary to clarify the statutory provisions.

Proposed section 2698.91(h)

This is a new section. Formerly 2698.91(d), the proposed amendment requires that the surveys be submitted to the Market Conduct Division of the Department of Insurance. The proposed amendment would allow the Department of Insurance to identify which Department should receive the surveys. The proposed amendment would further require that the surveys be submitted within 30 days of completing the labor rate surveys.

This section also currently requires that any confidential information not required by the statute or regulations be removed from the survey before it is submitted to Department of Insurance. This language has been moved from original section 2698.91(c). The change to this section is necessary for organizational purposes and consistency.

Proposed section 2698.91(i)

This is a new section. Formerly 2698.91(e), the proposed amendment sets out the procedure for requesting copies of the surveys. Minor changes have also been made to complete the citation to the California Public Records Act. The change to this section is necessary for organizational purposes.

Proposed section 2698.91(j)

This is a new section. The proposed amendment states that the Department of Insurance may request that the labor rate surveys be submitted in electronic version to aid the Department of Insurance in making the surveys available to the public. The change to this section is necessary to better implement the statutory provisions and simplify the submission and publication of the statutory requirements.

MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS:

The proposed amendments to the regulations do not impose any mandate on local agencies or school districts. There are no costs to local agencies or school districts for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement.

COST OR SAVINGS TO STATE/LOCAL AGENCY OR SCHOOL DISTRICT OR IN FEDERAL FUNDING:

The Commissioner has determined that the proposed amendments to the regulations will result in no cost or savings to any state agency, no cost to any local agency or school district that is

required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code, no other nondiscretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State.

ECONOMIC IMPACT ON BUSINESSES AND THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE:

The Commissioner has made an initial determination that the proposed amendments to the regulations do not have a significant, statewide adverse economic impact directly affecting business or the ability of California businesses to compete with businesses in other states.

POTENTIAL COST IMPACT ON PRIVATE PERSONS OR ENTITIES/BUSINESSES:

The Commissioner is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

FINDING OF NECESSITY:

The Commissioner finds that it is necessary for the welfare of the people of the state that the regulations apply to businesses.

EFFECT ON JOBS AND BUSINESSES IN CALIFORNIA:

The Commissioner is required to assess any impact the regulations may have on the creation or elimination of jobs in the State of California, the creation of new businesses, the elimination of businesses, and the expansion of businesses currently operating in the state. The Commissioner does not foresee that the proposed amendments to the regulations will have an impact on any of the above but invites interested parties to comment on this issue.

IMPACT ON HOUSING COSTS:

The matters proposed herein will have no significant effect on housing costs.

ALTERNATIVES:

The Commissioner must determine that no reasonable alternative considered by the Commissioner or that has otherwise been identified and brought to the attention of the Commissioner would be more effective in carrying out the purposes for which the regulations are imposed or would be as effective and less burdensome to affected private persons than the proposed regulations. The Commissioner invites public comment on alternatives to the regulations.

IMPACT ON SMALL BUSINESS:

The Commissioner has determined that the proposed regulations do not significantly affect small

businesses in that the regulations pertain primarily to insurers and do not require any significant action on the part of any auto body shop or other small business.

COMPARABLE FEDERAL LAW:

There are no existing federal regulations or statutes comparable to the proposed regulations.

TEXT OF REGULATIONS AND INITIAL STATEMENT OF REASONS:

The Department has prepared an initial statement of reasons that sets forth the reasons for the proposed adoption of the amendments to the regulations. Upon request, the initial statement of reasons will be made available for inspection and copying. Written requests for the initial statement of reasons or questions regarding this proceeding should be directed to the contact person listed above. Upon request, the final statement of reasons will be made available for inspection and copying once it has been prepared. Written requests for the final statement of reasons should be directed to the contact person listed above.

The file for this proceeding, which includes a copy of the proposed regulations, the statement of reasons, the information upon which the proposed action is based, and any supplemental information, including any reports, documentation and other materials related to the proposed action that is contained in the rulemaking file, is available for inspection and copying at 45 Fremont Street, 21st Floor, San Francisco, California 94105, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday.

AUTOMATIC MAILING:

A copy of this notice, including the informative digest, which contains the general substance of the proposed regulations, will automatically be sent to all persons on the Insurance Commissioner's mailing list.

WEBSITE POSTINGS:

Documents concerning this proceeding are available on the Department's website. To access them, go to <http://www.insurance.ca.gov>. Find near the top of the page the major heading 'Protecting Consumers.' In this section, scroll down until you see the subheading 'BE INFORMED.' Click on the nearby 'Search for Proposed Regulations' link. When the search field appears, enter 'RH05044654' (the Department's regulation file number for these regulations). Alternatively, search for the California Insurance Code number of a code section that the regulations implement (for instance, "758"), or search by key word (for example, 'labor rate'). Then, click on the "Submit" button to display links to the various filing documents.

To browse, click on the "Browse All Regulations" button near the bottom of the screen. A list of the names of regulations for which documents are posted will appear. Find in the list the "Auto Body Repair Labor Rate Surveys" link, and click it. Links to the documents associated with these regulations will then be displayed.

MODIFIED LANGUAGE:

If the regulations adopted by the Department differ but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Interested persons should request a copy of these regulations prior to adoption from the contact person listed above.